

Consortium of European Taxonomic Facilities (CETAF)

Code of Conduct and Best Practice for Access and Benefit-Sharing

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Introduction

CETAF, the Consortium of European Taxonomic Facilities, is a networked consortium of non-commercial scientific institutions in Europe formed to promote training, research and understanding of systematic biology and palaeobiology. Together, CETAF institutions hold very substantial biological (zoological and botanical), palaeobiological, and geological collections and provide the resource for the work of thousands of researchers in a variety of scientific disciplines.

As a response to Article 20 in the Nagoya Protocol, European laws implementing the Nagoya Protocol at the national level and specifically in response to Articles 8 and 13 of the *European Regulation on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union* CETAF has developed and adopted this Code of Conduct for Access and Benefit-Sharing, together with the annexed Best Practice. Also annexed is a 'Statement of Use of Biological Material' to provide clarity on how CETAF members use and treat samples of biological material. Throughout the Code of Conduct, Best Practice and other annexed documents, the term 'Biological material' is to be read as including the genetic resources that are within that material.

The principles and practices stated below are designed to fully support CETAF members' operations as taxonomic collection-holding and non-commercial biological research institutions in complying with Access and Benefit Sharing (ABS) legal and ethical requirements. The documents (i) outline the Code of Conduct governing principles under which collections are managed and collection-based research conducted in CETAF member institutions; (ii) provide details of best practices to ensure

implementation of those principles; (iii) explain to both Providers and users how biological specimens are used by CETAF institutions, which will support the negotiation of Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT) with Providers.

The CETAF Code of Conduct was developed by CETAF's *Legislations and Regulations Liaison Group*. They drew on their understanding of the processes and practices of their institutions, their understanding of the Nagoya Protocol and its implications, and a wide range of existing Codes of Conduct and Best practice documents, including particularly the *Principles on Access to Genetic Resources and Benefit-Sharing* for Botanic Gardens¹, the Swiss Academy of Sciences model Agreement on Access and Benefit Sharing for Non-Commercial Research², and the Code of Conduct of the International Plant Exchange Network (IPEN)³.

The Code of Conduct document below has several mutually-supporting sections annexed:

The Code of Conduct. This sets out the basic principles to which CETAF members will abide.

Best Practice (Annex 1). This provides detail of how the Code of Conduct should be implemented.

Use of Biological Materials statement (Annex 2). This is a tool for use when seeking permission to access biological material, whether for utilization or not. Any clauses inapplicable according to the particular needs of both contracting parties, and any clauses rejected by the providing country, may be deleted. By annexing it to an agreement it is intended to provide legal certainty over possible use of any material acquired.

Material Transfer Agreements. These are models for use in acquiring material or transferring it temporarily or permanently to third parties. They may be modified according to the individual needs of an institution.

Glossary (Annex 3). This explains the terms used elsewhere in the document.

Data use statement (Annex 4). This may be included in any publication to inform subsequent users that the original material was accessed under conditions that might preclude a change in use.

¹ <http://www.bgci.org/resources/article/0007/>

² <http://abs.scnat.ch/downloads/index.php>

³ http://www.bgci.org/resources/Description_of_IPEN/

CETAF Code of Conduct on Access and Benefit-sharing

CETAF Member Institutions commit themselves to the following Code of Conduct on access to genetic resources and benefit-sharing. This Code of Conduct applies to biological material⁴ that is accessed, i.e. acquired newly from a Providing Country, after the entry into force of the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity* (hereafter referred to as the *Nagoya Protocol*). Participating institutions are encouraged to apply this Code of Conduct, as far as reasonably possible, also to all other biological material in their collections⁵.

Convention on Biological Diversity and laws related to access to genetic resources and associated traditional knowledge and benefit-sharing

Participating institutions will:

- Honour the letter and spirit of the Convention on Biological Diversity (CBD), The Nagoya Protocol, and other relevant international agreements.
- Abide by international and national laws and regulations relating to Access and Benefit-sharing⁶ and, where required, respect Indigenous and Local Community customary laws and community protocols.
- Comply with Prior Informed Consents (PIC), Mutually Agreed Terms (MAT) and other agreements entered into with the Providing Country and Providers within that country.

Acquisition of biological material

Participating institutions will:

- In order to obtain Prior Informed Consent, provide a full explanation of the purposes for which biological material will be used and how genetic resources will be utilized (within current technical understanding).
- When acquiring biological material from *in situ* conditions, obtain information on the Providing Country's access laws.
- If required by legislation or regulation in the Providing Country, (i) obtain information on the Providing Country's procedures for obtaining Prior Informed Consent and relevant permits and for agreeing Mutually Agreed Terms, and (ii) obtain Prior Informed Consent and relevant permits from the Government of the Providing Country and other relevant stakeholders as

⁴ The term '*biological material*' is used throughout the documents because it describes all material in CETAF Member Institution collections, regardless if it contains 'functional units of heredity' or not. 'Genetic resources' is used when specifically referring to 'utilization' within the scope of the Nagoya Protocol. The CBD and the Nagoya Protocol define '*genetic resources*' as 'genetic material of actual or potential value', and '*genetic material*' as 'any material of plant, animal, microbial or other origin containing functional units of heredity'.

⁵ While reasonable efforts will be made, no responsibility is accepted for any retroactive claims, such as benefit-sharing.

⁶ In case of conflict between national law in the home country of the institution and the CETAF code of conduct, national law will take precedence.

required under national law, and (iii) agree terms, according to applicable law and best practice.

- When acquiring biological material from *ex situ* collections, agree terms with the body governing the *ex situ* collection under which the material can be used.
- When receiving genetic resources for the purposes of utilization from *ex situ* sources, whether from scientific collections, commercial sources or individuals, evaluate available documentation and, where necessary, take appropriate steps to ensure that the genetic resources were accessed and can be utilized in accordance with applicable law.
- When acquiring or otherwise receiving biological material for purposes other than utilization of genetic resources from *ex situ* sources, whether from scientific collections, commercial sources or individuals, evaluate available documentation and, where necessary, take appropriate steps to ensure, as far as is reasonably possible, that the biological material was acquired in accordance with applicable law.

Utilization of genetic resources

Participating institutions will:

- Only utilize genetic resources after performing due diligence to ensure that they were accessed in accordance with applicable ABS legislations or regulations and can legally be utilized, and obtaining documentation to demonstrate this.
- Utilize genetic resources on terms and conditions consistent with those under which they were accessed or otherwise acquired. Renegotiate Prior Informed Consent and Mutually Agreed Terms if the participating institution wishes to utilize genetic resources in a different way to those set out in the original agreements.

Supply of biological material to Third Parties

Participating institutions will:

- Provide biological material to Third Parties on loan only on terms and conditions consistent with those under which it was acquired.
- Provide biological material permanently to Third Parties only on terms and conditions consistent with those under which they were acquired and with copies of the documentation showing agreements with the Providing Country, where applicable, including Prior Informed Consent, Mutually Agreed Terms or other relevant documents.
- Transfer biological material for subcontracted work on genetic resources, such as to sequencing companies, only in compliance with the terms and conditions under which they were acquired, and set conditions in a contract that prohibit independent utilisation.

Use of written agreements

Participating institutions will:

- Acquire biological material using written agreements providing legal certainty and ensuring that there is a record of relevant documents such as Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT).

- Provide biological material to Third Parties using written Material Transfer Agreements (MTAs), setting out the terms and conditions under which the biological material may be acquired, used and supplied and resulting benefits shared.

Traditional Knowledge associated with Genetic Resources

Participating institutions will:

- Acquire Traditional Knowledge associated with genetic resources using written agreements providing legal certainty and ensuring that there is a record of relevant documents such as Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT).
- Use and provide Traditional Knowledge associated with genetic resources only in accordance with the terms and conditions under which it was acquired.

Benefit-sharing

Participating institutions will:

- Share benefits arising from their utilization of genetic resources and associated Traditional Knowledge fairly and equitably with the Providing Country and other appropriate stakeholders⁷.
- Strive to share benefits arising from the new utilization of genetic resources accessed or otherwise acquired prior to the entry into force of the Nagoya Protocol, as far as reasonably possible, in the same manner as for those acquired thereafter⁸.

Benefits may include any of those listed in the Annex to the Nagoya Protocol, although because of the not-for-profit nature of the work of the Participating Institutions are most likely to be non-monetary, *inter alia*: scientific training, education, capacity building, transfer of technologies, collaboration on scientific work programmes, and the mutual sharing of research results and of associated publications (see Annex 4 to this document).

Curation

Participating institutions will develop appropriate internal mechanisms and procedures to:

- record the terms and conditions under which biological material is accessed or otherwise acquired;
- record relevant information on their utilization of genetic resources or traditional knowledge associated with genetic resources, and benefits arising from that utilization;
- record the transfer of biological material to Third Parties permanently or on loan, including the terms and conditions of supply; and

⁷ as agreed in Prior Informed Consent and Mutually Agreed Terms at the time of Access, or as renegotiated following a subsequent change of use

⁸ While reasonable efforts will be made, no responsibility is accepted for any retroactive claims, such as benefit-sharing.

- record when and how biological material or traditional knowledge associated with genetic resources passes permanently out of custodianship, including complete consumption of samples or disposal.

Policies

Participating institutions will:

- Prepare, adopt and communicate institutional policies setting out how the Participating Institution will implement this Code of Conduct.
- Prepare a transparent policy on utilization of genetic resources and traditional knowledge associated with genetic resources.